

FILED

AUG 13 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Thomason, Deputy

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2 Tiffine E. Malamphy (SBN 312239)  
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6 Attorneys for Plaintiff  
Consumer Advocacy Group, Inc.

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN

10 CONSUMER ADVOCACY GROUP, INC. in  
11 the public interest,

12 Plaintiff,

13 vs.

14 SPROUTS FARMERS MARKET, INC., a  
Delaware Corporation; NISHIMOTO  
15 TRADING CO., LTD., a California  
Corporation; NISHIMOTO CO., LTD., a  
16 business entity from unknown; NICO-NICO  
NORI, INC., a business entity from unknown;  
17 GIMME HEALTH FOODS, LLC, a California  
Limited Liability Corporation; and DOES 1-  
18 20,

19 Defendants.

Case No. CIV 1600796

9-SPF  
[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

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20  
21 **1. INTRODUCTION**

22 **1.1** This Consent Judgment is entered into by and between Plaintiff, CONSUMER  
23 ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest of  
24 the public, and Defendant GIMME HEALTH FOODS, INC. (formerly known as GIMME  
25 HEALTH FOODS, LLC) ("GIMME" or "Defendant"), with each a "Party" to the action and  
26 collectively referred to as the "Parties."  
27  
28

1           **1.2 Defendant and Products**

2           **1.2.1** CAG alleges that GIMME is a California corporation which employs ten or  
3 more persons. For purposes of this Consent Judgment only, GIMME is deemed a person in the  
4 course of doing business in California and subject to the provisions of the Safe Drinking Water  
5 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
6 (“Proposition 65”).

7           **1.2.2** CAG alleges that GIMME manufactures, causes to be manufactured, sells,  
8 and/or distributes certain seaweed products in California.

9           **1.2.3** The term “Products” in this Consent Judgment means sushi nori products,  
10 seaweed thins snacks, roasted seaweed snacks, and all other seaweed or roasted seaweed products,  
11 which are manufactured, distributed or sold by Gimme Health Foods, Inc. or Gimme Health  
12 Foods, LLC.

13           **1.3 Listed Chemicals**

14           Cadmium and cadmium compounds (“Cadmium”) are listed by the State of California as  
15 chemicals known to cause cancer and/or birth defects or other reproductive harm.

16           **1.4 Notices of Violation and Products**

17           **1.4.1** On or about February 10, 2017, CAG claims it served Defendant and  
18 various public enforcement agencies with a document titled “60-Day Notice of Intent to Sue for  
19 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“Original Notice”)  
20 that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6  
21 for failing to warn individuals in California of exposures to Cadmium in “Seaweed Products” sold  
22 by GIMME in California. The Original Notice specifically named a non-exclusive exemplar  
23 product, gimMe™ Sushi Nori Wrap n’ Roll (“Exemplar Product”). No public enforcer has  
24 commenced or diligently prosecuted the allegations set forth in the Original Notice. The  
25 Exemplar Product and any other Products that contain the term “Sushi Nori” in the product name  
26 on the product packaging are referred to herein as the “Covered Products.”

27           **1.4.2** On or about November 30, 2018, CAG issued a second “60-Day Notice of  
28 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”

1 (“Second Notice”) alleging violations of Health & Safety Code § 25249.6 by Gimme Health  
2 Foods, Inc., Gimme Health Foods, LLC, and a retailer for failing to warn individuals in California  
3 of exposures to Cadmium in “Seaweed Products” sold by GIMME in California. The Second  
4 Notice specifically named a non-exclusive exemplar product, gimMe™ Sushi Nori Roasted  
5 Seaweed. No public enforcer has commenced or diligently prosecuted the allegations set forth in  
6 the Second Notice.

7           **1.4.3** On or about December 12, 2018, CAG issued a third “60-Day Notice of  
8 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
9 (“Third Notice”) alleging violations of Health & Safety Code § 25249.6 by Gimme Health Foods,  
10 Inc., Gimme Health Foods, LLC, and a retailer for failing to warn individuals in California of  
11 exposures to Cadmium in “Seaweed Products” sold by GIMME in California. The Third Notice  
12 specifically named a non-exclusive exemplar product, gimMe™ Sriracha Almond seaweed thins.  
13 No public enforcer has commenced or diligently prosecuted the allegations set forth in the Third  
14 Notice.

15           **1.4.4** On or about August 21, 2015, CAG issued a “60-Day Notice of Intent to  
16 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Action of 1986” alleging  
17 violations of Health & Safety Code § 25249.6 by Gimme Health Foods, LLC, Gimme Health  
18 Foods, Inc. and certain retailers for failing to warn individuals in California of exposure to lead  
19 and lead compounds in certain seaweed products sold in California. This notice specifically  
20 named a non-exclusive exemplar product, gimMe™ organic Roasted Seaweed Snacks - Sesame.  
21 No public enforcer commenced or diligently prosecuted the allegations set forth in the notice.

22           **1.4.5** On or about November 6, 2015, CAG issued a “60-Day Notice of Intent to  
23 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Action of 1986” alleging  
24 violations of Health & Safety Code § 25249.6 by Gimme Health Foods, LLC, Gimme Health  
25 Foods, Inc. and certain retailers for failing to warn individuals in California of exposure to lead  
26 and lead compounds in certain seaweed products sold in California. This notice specifically  
27 named a non-exclusive exemplar product, gimMe™ organic Roasted Seaweed Snacks - Teriyaki.  
28 No public enforcer commenced or diligently prosecuted the allegations set forth in the notice.

1                   **1.4.6** The notice letters described in this Section 1.4 are referred to collectively as  
2 the “Notices.”

3                   **1.5     Operative Complaint**

4                   On October 19, 2017, CAG filed its Second Amended Complaint (“Complaint”) to add  
5 Gimme Health Foods, LLC as a defendant in the above-captioned action and alleging claims in the  
6 Fourth Cause of Action as to seaweed products that are “Sushi Nori Roasted Seaweed.” Upon  
7 entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to name  
8 Gimme Health Foods, Inc. (formerly known as Gimme Health Foods, LLC) as a defendant to the  
9 Fourth Cause of Action in the Complaint.

10                  **1.6     Consent to Jurisdiction**

11                  For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
13 over GIMME as to the acts alleged in the Complaint, that venue is proper in the County of Marin,  
14 and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and  
15 resolution of the allegations against GIMME contained in the Complaint and the Notices, and of  
16 all claims which were or could have been raised by any person or entity based in whole or in part,  
17 directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

18                  **1.7     No Admission**

19                  This Consent Judgment resolves claims that GIMME denies and disputes and defenses that  
20 CAG denies and disputes. The Parties enter into this Consent Judgment pursuant to a full and  
21 final settlement of any and all claims between the Parties for the purpose of avoiding prolonged  
22 litigation. Nothing in this Consent Judgment shall be construed as an admission by the Parties of  
23 any material allegation in the Notices or the Complaint, or of any fact, conclusion of law, issue of  
24 law, or violation of law of any kind, including without limitation, any admission concerning any  
25 alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or  
26 equitable doctrine. Nothing in this Consent Judgment, nor compliance with its terms, shall  
27 constitute or be construed as an admission by the Parties, or give rise to any inference, of any fact,  
28 conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by

GIMME, its officers, directors, employees, or parent, subsidiary, or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

**1.8** “Effective Date” means the date that this Consent Judgment is approved and entered by the Court. The “Compliance Date” means the date that is three (3) months after the Effective Date.

## **2. INJUNCTIVE REQUIREMENTS**

**2.1** Any Covered Products that are manufactured on and after the Compliance Date that GIMME thereafter distributes for sale in California or sells in the State of California shall either (i) contain no more than 95 parts per billion (“ppb”) cadmium and contain no more than 15 ppb inorganic arsenic or (ii) comply with the warning requirements of Section 2.3.

**2.2** As used in this Agreement, the term “distribute for sale in California” shall mean: GIMME directly ships any Covered Product into California for sale in California or sells the Covered Product to a distributor or retailer that GIMME knows or has reason to know will sell the Covered Product in California.

**2.3** For any Covered Products subject to the warning requirement under Section 2.1, GIMME shall provide a Proposition 65-compliant warning for the Covered Products using one of the following options:

Option 1:

**WARNING:** Consuming this product can expose you to chemicals including cadmium, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

If the warning is printed on the label, the warning shall be set off from other surrounding information in the label and enclosed in a box.

Option 2:

**⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 The pictogram specified in Option 2 shall be in yellow with a black exclamation mark; provided  
2 however, the pictogram may be in white instead of yellow if the Covered Product label does not  
3 contain the color yellow.

4           **2.3.1** The warning requirements set forth herein are imposed pursuant to the  
5 terms of this Consent Judgment and are recognized by the Parties as not being the exclusive  
6 manner of providing a warning for the Covered Products. Warnings may be provided as specified  
7 in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California  
8 Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

9           **2.4** GIMME may move to modify this Consent Judgment to incorporate any naturally  
10 occurring allowance for cadmium, inorganic arsenic, or lead that CAG agrees to in a future  
11 consent judgment involving seaweed products or that the California's Office of Environmental  
12 Health Hazard Assessment adopts by regulation that applies to seaweed products. CAG agrees not  
13 to oppose any such motion except for good cause shown.

### 14 **3. SETTLEMENT PAYMENT**

15           **3.1 Payment and Due Date:** Within 30 days of the Effective Date, GIMME shall pay a  
16 total of two hundred and sixty-eight thousand dollars (\$268,000.00) in full and complete  
17 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any  
18 other claim for costs, expenses or monetary relief of any kind for claims that were or could have  
19 been asserted in the Notices or Complaint, as set forth below.

20           **3.1.1 Civil Penalty:** GIMME shall issue two separate checks totaling twenty-  
21 eight thousand five hundred and eighty dollars (\$28,580.00) as follows for alleged civil penalties  
22 pursuant to Health & Safety Code § 25249.12:

23           (a) GIMME will issue one check made payable to the State of  
24 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of  
25 twenty-one thousand four hundred and thirty-five dollars (\$21,435.00) representing 75% of the  
26 total civil penalty and GIMME will issue a second check to CAG in the amount of seven thousand  
27 one hundred and forty-five dollars (\$7,145.00) representing 25% of the total civil penalty;

28

1 (b) Separate 1099s shall be issued for each of the above payments:  
2 GIMME will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486)  
3 in the amount of \$21,435.00. GIMME will also issue a 1099 to CAG in the amount of \$7,145.00  
4 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,  
5 Beverly Hills, California 90212.

6 **3.1.2 Additional Settlement Payment:** GIMME shall pay twenty-one thousand  
7 four hundred and twenty dollars (\$21,420.00) as an additional settlement payment to “Consumer  
8 Advocacy Group, Inc.” pursuant to Health & Safety Code § 25249.7(b) and California Code of  
9 Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%)  
10 for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in various  
11 products, and for expert fees for evaluating exposures through various mediums, including but not  
12 limited to consumer product, occupational, and environmental exposures to Proposition 65 Listed  
13 Chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive  
14 scientific analysis necessary for those files in litigation and to offset the costs of future litigation  
15 enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative  
16 costs incurred during investigation and litigation to reduce the public’s exposure to Proposition 65  
17 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such  
18 exposures and attempting to persuade those persons and/or entities to reformulate their products or  
19 the source of exposure to completely eliminate or lower the level of Proposition 65 Listed  
20 Chemicals including but not limited to costs of documentation and tracking of products  
21 investigated, storage of products, website enhancement and maintenance, computer and software  
22 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,  
23 office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney  
24 General, CAG shall provide to the Attorney General copies of documentation demonstrating how  
25 the above funds have been spent. CAG shall be solely responsible for ensuring the proper  
26 expenditure of such additional settlement payment.

27 **3.1.3 Reimbursement of Attorney Fees and Costs:** GIMME shall pay two  
28 hundred and eighteen thousand dollars (\$218,000.00) payable to “Yeroushalmi & Yeroushalmi” as

1 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees,  
2 expert fees, and any and all other costs and expenses incurred as a result of investigating, bringing  
3 this matter to the GIMME's attention, litigating, negotiating a settlement in the public interest, and  
4 seeking and obtaining court approval of this Consent Judgment.

5           **3.1.4** Other than the payment to OEHHA described above, all payments  
6 referenced in paragraphs 3.1.1, 3.1.2, and 3.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
7 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
8 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,  
9 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently  
10 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the  
11 payment to OEHHA was delivered.

#### 12 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

13           **4.1** This Consent Judgment is a full, final, and binding resolution between, on the one  
14 hand, CAG, on behalf of itself and its owners, principals, shareholders, officers, directors,  
15 employees, agents, parents, subsidiaries, successors, assigns, investigators, and attorneys  
16 (collectively referred to as "CAG Releasors"), and on behalf of the public interest, and, on the  
17 other hand, Gimme Health Foods, Inc. and Gimme Health Foods, LLC and their officers,  
18 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,  
19 partners, affiliates, agents, sister companies, and their predecessors, successors, and assigns  
20 ("Defendant Releasees"), and each entity to whom GIMME and any other Defendant Releasees  
21 directly or indirectly distribute or sell, or distributed or sold, the Covered Products, including but  
22 not limited to distributors, wholesalers, customers, retailers (including but not limited to Sprouts  
23 Farmers Market, Inc., Whole Foods Market, and Whole Foods Market California, Inc.)  
24 franchisees, cooperative members, licensees, and the successors and assigns of each of them  
25 ("Downstream Defendant Releasees"), of all claims that have been or could have been asserted for  
26 alleged or actual violations of Proposition 65 or its implementing regulations for alleged exposures  
27 to Cadmium from the Covered Products manufactured, distributed or sold by GIMME or any other  
28 Defendant Releasees before the Compliance Date. GIMME, Defendant Releasees, and

1 Downstream Defendant Releasees are hereafter collectively referred to as the "Released Parties".  
2 Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition  
3 65 against any person other than GIMME, Defendant Releasees, or Downstream Defendant  
4 Releasees.

5       **4.2** CAG, on behalf of itself and the CAG Releasors, and on behalf of the public  
6 interest, waives all rights to institute or participate in, directly or indirectly, any form of legal  
7 action, and discharges and releases all claims, actions, causes of action (in law or in equity), suits,  
8 liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, and fees  
9 (including, but not limited to, investigation fees, expert fees, and attorney's fees), and expenses  
10 (collectively, "Claims") as to all Released Parties, for violations of Proposition 65 from the  
11 alleged failure to provide warnings for alleged exposures to Cadmium, or for causing alleged  
12 exposures to Cadmium, in Covered Products manufactured, distributed, or sold before the  
13 Compliance Date. Compliance by GIMME with Sections 2.1-2.3 of this Consent Judgment shall  
14 be deemed to constitute compliance with Proposition 65 with respect to any Cadmium in the  
15 Covered Products manufactured, distributed, or sold on or after the Compliance Date.

16       **4.3** CAG on behalf of itself and the CAG Releasors only, hereby waives all rights to  
17 institute or participate in, directly or indirectly, any form of legal action, and discharges and  
18 releases all Claims as to all Released Parties, whether known or unknown or suspected or  
19 unsuspected, regarding the Covered Products manufactured, distributed or sold by the Released  
20 Parties arising from any violation of Proposition 65 or any other statutory or common law  
21 regarding alleged exposures to, or failure to warn about alleged exposures to, Cadmium, lead and  
22 lead compounds, and organic or inorganic arsenic in the Covered Products. With respect to the  
23 Claims released in this Section 4.3, CAG, on behalf of itself and the CAG Releasors, waives any  
24 and all rights and benefits which it now has, or in the future may have, conferred upon it with  
25 respect to by virtue of the provisions of section 1542 of the California Civil Code, which provides  
26 as follows:

27               A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
28               THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
                  KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

1 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
2 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
4 OR RELEASED PARTY.

5 CAG understands and acknowledges that the significance and consequence of this waiver  
6 of California Civil Code section 1542.

7 In addition, CAG agrees that the warning requirements of Section 2.3 shall be deemed to  
8 be compliant for the claims as to alleged exposures to lead and lead compounds ("Lead") that are  
9 covered in a prior settlement agreement between GIMME and CAG dated April 8, 2016 ("Lead  
10 Settlement").

## 11 **5. ENFORCEMENT OF JUDGMENT**

12 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties  
13 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
14 California, County of Marin, enforce the terms and conditions contained herein. A Party may  
15 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
16 provides thirty days' written notice to the Party allegedly failing to comply with the terms and  
17 conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an  
18 open and good faith manner and follows the procedures set out in this Section 5. For purposes of  
19 this section, "lot" shall mean the Universal Product Code Number printed on the packaging of a  
20 product, not a number added by a subsequent seller unless GIMME no longer prints a Universal  
21 Product Code Number on product packaging, and the best by date printed on the packaging.

22 **5.2 Notice of Violation.** Prior to bringing any Proposition 65 60-day notice of  
23 violation under Cal. Health & Safety Code § 25249.7 as to any Product, or prior to bringing any  
24 motion, order to show cause, or other proceeding to enforce the terms of this Consent Judgment or  
25 the Lead Settlement, CAG shall provide a Notice of Violation ("NOV") to GIMME and follow the  
26 enforcement provisions of this Section 5. The enforcement provisions of this Consent Judgment  
27 supersede the enforcement provisions of the Lead Settlement with respect to any lead in the  
28 Products. The NOV shall include for each of the Products: (a) the name of the Product; (b)  
specific dates when CAG purchased and tested the samples of the Products; (c) the store or other

1 place at which the Product samples were purchased by CAG; (d) all analytical testing results, from  
2 a California certified laboratory, of samples of the same Product showing an average concentration  
3 of cadmium, lead, or inorganic arsenic, as applicable, that exceeds the level set forth in this  
4 Consent Judgment or the Lead Settlement, as applicable; (e) the lot code(s) for the lot(s) at issue in  
5 the NOV; (f) evidence establishing the warning required in Section 2.3 was not provided; and (g)  
6 any other evidence or support for the allegations in the NOV. In order to avail itself of this  
7 provision with respect to a Product, CAG must produce to GIMME all testing for cadmium, lead,  
8 or inorganic arsenic, as applicable, in its possession, custody, or control pertaining to the lot of the  
9 Product at issue in the NOV that was performed within the year prior to CAG issuing its NOV.  
10 The results of all such samples shall be included in calculating the average concentration of  
11 cadmium, lead, or inorganic arsenic in Section 5.2(d).

12 **5.2.1 Non-Contested NOV.** CAG shall take no further action of any kind  
13 regarding the alleged violation if, within 60 days of receiving such NOV, GIMME serves a Notice  
14 of Election (“NOE”) not to contest the NOV that meets one of the two conditions listed below. If  
15 GIMME complies with this Section 5.2.1, CAG is not entitled to seek monetary penalties, fees or  
16 costs of any kind, or any other non-monetary relief.

17 (a) A statement that the Product was manufactured before the  
18 Compliance Date; or

19 (b) A statement that, since receiving the NOV, GIMME has taken  
20 corrective action by requesting that its customers in California remove the lot(s) of the Product  
21 identified in the NOV from sale in California and destroy or return the Product to GIMME.

22 **5.2.2 Contested NOV.** GIMME may serve a Notice of Election (“NOE”)  
23 informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

24 (a) In its election, GIMME may request that the sample(s) of the  
25 Product tested by CAG be subject to confirmatory testing at a California-accredited laboratory.

26 (b) If the confirmatory testing establishes that the Product does not  
27 contain cadmium, lead, or inorganic arsenic above the standards in the Consent Judgment or the  
28 Lead Settlement, as applicable, CAG shall take no further action regarding the alleged violation.

1 If the testing does not establish compliance with the cadmium, lead, or inorganic arsenic standards  
2 set in the Consent Judgment or the Lead Settlement, as applicable, GIMME may withdraw its  
3 NOE to contest the violation and may serve a new NOE pursuant to Section 5.2.1.

4 (c) If GIMME does not withdraw a NOE to contest the NOV, the  
5 Parties shall meet and confer for a period of no less than 60 days before CAG may seek relief  
6 through a judicial proceeding. In any such proceeding with respect to Products other than Covered  
7 Products, GIMME does not waive its right to rebut the standards set in Section 2.1 based on the  
8 statutory warning exemption, regulatory safe harbor level, or other applicable defenses to  
9 Proposition 65 enforcement, and the terms of this Consent Judgment shall not constitute or be  
10 construed as an admission by Gimme, or give rise to any inference against Gimme, as to the  
11 appropriate warning standard in that event.

12 **5.3** In no case shall CAG issue more than one NOV per Product per year. Provided  
13 however, CAG shall not issue any NOV in the first twelve months after the Effective Date.

14 **5.4** In the event there is a Contested NOV under Section 5.2.2, in any proceeding  
15 brought by either Party to enforce this Consent Judgment or the Lead Settlement, the prevailing  
16 Party shall be entitled to recover its reasonable attorney's fees and costs.

## 17 **6. ENTRY OF CONSENT JUDGMENT**

18 **6.1** CAG shall promptly prepare and file a motion seeking approval of this Consent  
19 Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent  
20 Judgment, CAG and GIMME waive their respective rights to a hearing and trial on the allegations  
21 in the Notices and Complaint, except as provided in Section 5 of this Consent Judgment.

22 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent  
23 Judgment and any and all prior agreements between the Parties merged herein shall terminate and  
24 become null and void, and the actions shall revert to the status that existed prior to the execution  
25 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
26 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
27 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
28

1 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine  
2 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3       **6.3** Within five days of the Effective Date, CAG shall file a request for dismissal  
4 without prejudice of the Fourth Cause of Action of the Complaint as to Sprouts Farmers Market,  
5 Inc.

6 **7. RETENTION OF JURISDICTION**

7       **7.1** This Court shall retain jurisdiction of this matter to implement and enforce the  
8 terms of this Consent Judgment under Code of Civil Procedure § 664.6. Nothing in this Consent  
9 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by  
10 law.

11 **8. SERVICE ON THE ATTORNEY GENERAL**

12       **8.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
13 California Attorney General so that the Attorney General may review this Consent Judgment prior  
14 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney  
15 General has received the aforementioned copy of this Consent Judgment, CAG may then submit it  
16 to the Court for approval.

17 **9. ATTORNEY FEES**

18       **9.1** Except as specifically provided in Sections 3.1.3 and 5.4, each Party shall bear its  
19 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

20 **10. GOVERNING LAW**

21       **10.1** The validity, construction and performance of this Consent Judgment shall be  
22 governed by the laws of the State of California, without reference to any conflicts of law  
23 provisions of California law.

24       **10.2** In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
25 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
26 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
27 rendered inapplicable by reason of law generally as to the Products, then Defendant may provide  
28 written notice to CAG of any asserted change in the law, and shall have no further obligations

1 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so  
2 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any  
3 obligation to comply with any other pertinent state or federal law or regulation.

4       **10.3** The Parties, including their counsel, have participated in the preparation of this  
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
9 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
10 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
11 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
12 this regard, the Parties hereby waive California Civil Code § 1654.

## 13 **11. EXECUTION AND COUNTERPARTS**

14       **11.1** This Consent Judgment may be executed in counterparts and by means of facsimile  
15 or portable document format (pdf), which taken together shall be deemed to constitute one  
16 document and have the same force and effect as original signatures.

## 17 **12. NOTICES**

18       **12.1** Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

19       If to CAG:

20       Reuben Yeroushalmi  
21       Yeroushalmi & Yeroushalmi  
22       9100 Wilshire Boulevard, Suite 240W  
23       Beverly Hills, CA 90212

24       If to Defendant GIMME:

25       Sarah Esmaili  
26       Arnold & Porter Kaye Scholer  
27       Three Embarcadero Center, 10<sup>th</sup> Floor  
28       San Francisco, CA 94111-4024

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**IT IS SO STIPULATED:**

PLAINTIFF CONSUMER ADVOCACY  
GROUP, INC. *et al.*

Michael Marcus

Director

Dated: \_\_\_\_\_, 2019

Signature \_\_\_\_\_

Title

Date: \_\_\_\_\_

15

1           **13. AUTHORITY TO STIPULATE**

2           Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
3 Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the  
4 Party represented and legally to bind that Party.

5  
6 **IT IS SO STIPULATED:**

7 Dated: \_\_\_\_\_, 2019

PLAINTIFF CONSUMER ADVOCACY  
GROUP, INC.

8  
9 \_\_\_\_\_  
Signature

10 \_\_\_\_\_  
Printed Name

11  
12 \_\_\_\_\_  
Title

13  
14  
15 Dated: FEB 22<sup>ND</sup>, 2019

DEFENDANT GIMME HEALTH FOODS, INC.  
(FORMERLY KNOWN AS GIMME HEALTH  
FOODS, LLC)

16  
17  
18 \_\_\_\_\_  
Signature

19 Stephen Broad  
Printed Name

20 CEO  
Title

21  
22  
23 **IT IS SO ORDERED.**

24  
25 Date: 8/13/19

26 \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT